

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC. *et al.*

Defendants.

Civil Action Nos.
3:21-CV-501-RJC-WCM

DECLARATION OF ELISEO R. PUIG

I, Eliseo R. Puig, declare as follows:

1. I submit this declaration in support of Plaintiff FS Medical Supplies, LLC's ("FSMS") Motion for Leave to Amend Complaint.

2. I am a Senior Associate at the law firm of Arnold & Porter Kaye Scholer LLP, counsel of record for FSMS. I am familiar with the events described in this declaration.

3. Paragraph 66.d. of FSMS's proposed SASC quotes a September 10, 2020 text message from Jonathan Bracey to Stephen Scalia that states Mr. Bracey planned to have a call with the UK Government "without Laird." Ex. 1 (TannerUK00370022). Tanner produced the document on June 14, 2024.

4. Paragraph 66.e. of FSMS's proposed SASC quotes a September 10, 2020 calendar invitation showing that Tanner planned to "start blowing-up" Jim Mao's phone. Ex. 2 (TannerUK00382963). Tanner produced the document on September 27, 2024.

5. Paragraph 66.j. of FSMS's proposed SASC describes a September 12, 2020 email in which Mr. Scalia instructed Mr. Bracey not to deliver the executed Distribution Agreement to FSMS. Ex. 3 (TannerUK00338798). Tanner produced the document on June 11, 2024.

6. Paragraph 66.k. of FSMS's proposed SASC quotes a September 14, 2020 text message showing that Tanner planned to get Orient Gene on "a separate call." Ex. 4 (TannerUK00370017). Tanner produced the document on June 14, 2024.

7. Paragraph 67.e. of FSMS's proposed SASC describes a September 17, 2020 email chain showing that Tanner planned to keep more than 50% of gross profits for itself. Ex. 5 (TannerUK00369421). Tanner produced the document on June 14, 2024.

8. Paragraph 69 of FSMS's proposed SASC quotes a September 18, 2020 text message chain from Mr. Scalia to Raymond Fairbanks Bourne showing that Tanner planned to "readjust [its] deal with FSMS." Ex. 6 (TannerUK00380997). Tanner produced the document on August 22, 2024.

9. Paragraph 70 of FSMS's proposed SASC quotes a September 21, 2020 text message chain between Mr. Scalia and Mr. Bourne showing that Tanner had a "renegotiation strategy" for its deal with FSMS. Ex. 7 (TannerUK00381016). Tanner produced the document on August 22, 2024.

10. Tanner produced its general ledger on July 26, 2024, which showed inter-company transfers between Tanner entities and transfers between Tanner entities and Mr. Bourne.

11. Paragraphs 140 and 141 of FSMS's proposed SASC quote excerpts of the August 1, 2024 Rule 30(b)(6) testimony of Tanner Pharma UK Limited, which describe the Tanner entities' inter-company transactions and issuance of dividends.

12. Paragraph 140 of FSMS's proposed SASC describes a December 21, 2020 text message chain between Mr. Bourne and Mr. Scalia, in which Mr. Bourne instructed Mr. Scalia to take \$1 million out of Tanner Pharma UK Limited to pay bonuses to the employees of Bourne Partners. Ex. 8 (TannerUK00335151). Tanner produced the document on June 11, 2024.

13. Paragraph 135 of FSMS's proposed SASC alleges that Tanner's accountants created false records of board meetings that never took place, which was revealed at Mrs. Bourne's November 7, 2024 deposition. Ex. 9 (Deposition of M. Bourne at pp. 165-170).

14. Paragraph 148 of FSMS's proposed SASC quotes a document submitted to the IRS on Mr. Bourne's behalf. Ex. 10 (BOURNE_0015287). Defendants produced the document on July 12, 2024.

15. On August 1, 2022, Katherine Smoot testified as the Rule 30(b)(6) witness for Tanner Pharma UK Limited about Tanner's Transfer Pricing Policy. Ex. 11 (Deposition of K. Smoot at pp. 45-77).

16. Exhibit 12 is a true and correct copy of Deposition Exhibit 468 introduced at Mr. Bourne's deposition, which summarizes the frequency of Mr. Bourne's contacts with the McGuireWoods law firm.

17. Exhibit 13 is a true and correct copy of a December 23, 2024 email from Robert Fuller, counsel for the Bournes, to counsel for FSMS and counsel for Tanner, addressing defense expert Mr. Steadman's opinion and deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 27 , 2024, in Denver, Colorado.

A handwritten signature in blue ink, appearing to read 'ER Puig', is written over a horizontal line.

Eliseo R. Puig